

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH BARTELLI,

Plaintiff,

v.

DONALD JONES,

Defendant.

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CIVIL ACTION NO. 3:CV-04-0906
(JUDGE KOSIK)

MEMORANDUM AND ORDER

AND NOW, THIS 16th DAY OF NOVEMBER, 2005, IT APPEARING TO THE
COURT THAT:

[1] On April 26, 2004, plaintiff filed the above-captioned action pursuant to
42 U.S.C. § 1983;

[2] the matter was assigned to United States Magistrate Judge Thomas M.
Blewitt;

[3] on October 29, 2004, this court adopted in part a Report and
Recommendation of the Magistrate Judge and dismissed claims four and five of
plaintiff's complaint, denied plaintiff's request to file an amended complaint, and
remanded the matter to the magistrate judge for further proceedings on plaintiff's
first three claims;

[4] in his remaining claims, the plaintiff asserts that: (1) defendant Jones
conspired to violate plaintiff's due process and equal protection rights beginning
in April of 2000; (2) the defendant conspired with a guard at SCI Dallas on October
29, 2001, to retaliate against Bartelli after he reported the "illegal, racist and

unprofessional acts of staff at SCI Dallas;" and, (3) the defendant violated plaintiff's equal protection rights on December 12, 2001, when the defendant told Bartelli that he would never believe an inmate over a staff member;¹

[5] the defendant filed a motion for summary judgment and for judgment on the pleadings on May 23, 2005; (Doc. 46).

[6] both parties briefed the motion for summary judgment;

[7] Magistrate Judge Blewitt issued a Report and Recommendation on September 16, 2005, suggesting that we grant the defendant's motion and dismiss all three of the plaintiff's claims;

[8] neither the plaintiff, nor the defendant filed objections to the Report and Recommendation.²

IT FURTHER APPEARING THAT:

[9] If no objections are filed to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of the plaintiff's

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The plaintiff has filed over a dozen 42 U.S.C. § 1983 actions asserting claims of retaliation against guards and officials at SCI Dallas. On July 26, 2005, we adopted a Report and Recommendation issued by Magistrate Judge Blewitt dismissing another 42 U.S.C. § 1983 retaliation action filed by Bartelli. We dismissed the case pursuant to 28 U.S.C. § 1915(g), also known as the "three strikes" rule, as Bartelli had filed three prior civil rights actions in this court that warranted dismissal for failure to state a claim. See *Bartelli v. Beard, et al.* CV-05-1285.

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Bartelli filed a document on October 5, 2005, noting that he had been transferred to new prison, SCI Huntingdon. (Doc. 69). He asserts that the staff at both SCI Huntingdon and SCI Dallas interfered with his mail and refused to deliver plaintiff's legal documents. Plaintiff asked the court for an extension of time to file objections to the Report and Recommendation, noting that he intended to file same by October 8, 2005. As of the date of this order, the plaintiff has not filed objections to the Report and Recommendation.

claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give “reasoned consideration” to a magistrate judge’s report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3rd Cir. 1987);

[10] having examined the Magistrate Judge’s Report and Recommendation, we agree with his recommendation to grant the defendant’s motion for summary judgment and motion for judgment on the pleadings;

[11] we concur with the Magistrate Judge’s analysis of the issues raised in the defendants’s motion and find the Magistrate Judge’s review of the record to be comprehensive;

[12] specifically, we agree with the Magistrate Judge’s conclusion that claims one, two and three of the plaintiff’s complaint are time-barred by the applicable statute of limitations;

[13] we further agree that Bartelli failed to exhaust his administrative remedies with respect to claim one.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated September 16, 2005 (Doc. 66) is **adopted**;

[2] the defendant’s motion for summary judgment and for judgment on the pleadings is granted as to all remaining claims in the plaintiff’s complaint;

[3] judgment is entered in favor of defendant, Donald Jones, and against the plaintiff, Keith Bartelli, on all claims; and,

[4] the Clerk of Court is directed to close this case, and forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge